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CROATIA'S DEMOCRACY DEFICIT
A PRE-ELECTORAL ASSESSMENT

SUMMARY

Parliamentary elections are scheduled to take place in Croatia on January 3, 2000. The elections will be the third for the House of Representatives since the country's independence in 1991.[1] Following the death of President Franjo Tudjman on December 10, presidential elections must also take place before February 9. Given the upheaval and war that attended the break-up of the former Yugoslavia, Tudjman's legacy of unbroken democratic governance in Croatia is a notable accomplishment. Yet Tudjman has also left in place a state which places serious limits on the civil and political rights of its citizens. Universal suffrage is denied in practice to many of Croatia's Serb citizens. Media freedom and the right to hold political rallies and public demonstrations are limited by poor legislation and government interference. The independence of the judiciary is curtailed by the ruling party. True democracy requires a society based on the rule of law, separation of powers, and respect for human rights. The 2000 parliamentary elections provide an opportunity to assess the state of democracy in Croatia after Tudjman, both in terms of the conduct of free and fair elections and of the broader civil and political rights that democracy encompasses.

On the eve of parliamentary elections, Croatia faces an ongoing democracy deficit. Despite a vibrant civil society with very active nongovernmental organizations, improvements in security, and the reintegration of Eastern Slavonia,[2] many problems remain. Croatia's newly passed election law, together with related legislation contains both omissions and flaws, even as it improves access for election monitors and reduces the disproportionate representation in parliament of Croats who live outside Croatia. Universal suffrage is weakened by the denial of citizenship and hence the right to vote to tens of thousands of Croatian Serb refugees. Freedom of expression is curtailed, especially in the area of broadcast media, which remains under the tight control of the government. The right to assemble is at the discretion of local authorities, despite rulings by the Constitutional Court that it is a fundamental freedom. Most disturbing, however, has been the politicization of new appointments to the Constitutional Court, with appointments made on the basis of political affiliation rather than merit, which threaten to rob Croatia of one of its most respected independent institutions, with potentially dire consequences for the separation of powers and the rule of law.

RECOMMENDATIONS

To the outgoing Government of Croatia:

- Ensure that the state broadcaster, Croatian Radio Television (HRT), respects the November 5 regulations guaranteeing equal representation for all political parties in its coverage of the election campaign;
- Urge local authorities and police not to restrict freedom of assembly by restricting public demonstrations and political rallies during the entire election period; and
- Respect and implement the results of the election, including the recommendations for prime minister and other ministerial appointments made by the majority party or coalition in the parliament.

To the incoming Government of Croatia:

- Undertake serious reform of HRT in line with 1998 recommendations of the Council of Europe experts;

[1] The Croatian parliament has two chambers: the House of Deputies, which is the main legislative body and from which a government is formed, and the house of counties, which serves as an upper house and can amend or revise legislation. The January 2000 elections are only for the house of deputies. The current term of members of the House of Counties expires in 2001.

[2] Following the defeat of Serb rebels occupying the Krajina, Banija-Kordun, and parts of Western Slavonia in Croatia in 1995, a political settlement was reached in December 1995 between Serb rebels and the Croatian government for Eastern Slavonia, the sole remaining area of Croatia under Serb control. Under the agreement, the United Nations administered Eastern Slavonia for two years, and in January 1998 control reverted to the Croatian government.

- Amend the provisions of the Constitutional Law on the Constitutional Court and the Law on the Status of Parliament concerning appointments to the Constitutional Court such that each candidate will be subject to a public hearing before the Judicial Board to assess their professional qualifications prior to their approval by the parliament on a candidate by candidate basis;
- Amend the law on public assembly in accordance with the March 1999 ruling of the Constitutional Court so that the law identifies the specific locations in each municipality where public gathering are permitted and prohibited;
- Reform the law on citizenship to make verification of citizenship by Croatian Serb refugees easier and to streamline the application process for citizenship by naturalization for long-term Serb residents of Croatia; and
- Amend the Constitutional Law on Minorities to provide for the meaningful political representation of minorities previously guaranteed under the articles of the law suspended in 1995.

To the OSCE Office for Democratic Institutions and Human Rights:
- Include an assessment of the Constitutional Court's role in resolving electoral disputes in the final report on the elections; and
- Monitor implementation of results in the post-election period and reflect findings in the overall assessment of elections; and
- Closely monitor and support implementation of recommendations contained in the OSCE's election assessment, including through follow-up missions and intergovernmental assistance.

To the OSCE Permanent Council:
- Continue the mandate of the OSCE Mission to Croatia for the year 2000; and
- Reiterate Croatia's obligations as a member of the OSCE to the incoming Government of Croatia.

To the OSCE Representative on Freedom of Media:
- Continue engagement in Croatia and work with the new government to develop an action plan to bring Croatia into compliance with its OSCE commitments with respect to freedom of media.

To the OSCE High Commissioner on National Minorities:
- Continue engagement in Croatia, including efforts to address the problems relating to citizenship and enfranchisement for Croatian Serb refugees.

To the Council of Europe:
- Maintain the monitoring procedure on Croatia including close attention to the efforts of the incoming government to address the violations identified in this report; and
- Reiterate Croatia's membership obligations to the incoming Government of Croatia and in the context of the Parliamentary Assembly's monitoring procedure, develop together with the incoming Government of Croatia a timetable for meeting those obligations.

To the European Union:
- Maintain the political and economic criteria for closer membership under the Stabilization and Association Process; and
- Monitor the post-election period to focus on implementation of the election results.

To the United States Government:
- Maintain the criteria outlined in the "roadmap to partnership for peace" including on democratization and the return of refugees; and
- Monitor the post-election period to focus on implementation of the election results, including ministerial appointments.

BACKGROUND

Elections are generally measured against two yard-sticks—whether they are "free" and whether they are "fair." The "freeness" of an election is measured according to the ability of voters to express their will free from intimidation. It includes the requirements of freedom of expression, freedom of association, and freedom of assembly. The "fairness" of an election is a measure of whether or not there is "a level playing field for all participants in the election process."[3] Discriminatory election laws or media regulation, gerrymandering (re-drawing of electoral districts to change the likely results) or restrictions on the right of candidates to stand are all examples of unreasonable restrictions on the"fairness" of an election. Democratic elections must be both free and fair. Beyond election day, the implementation of results is an additional, practical measure of the success of an election.

International bodies that have monitored previous presidential, parliamentary, and local elections in Croatia have concluded that those elections were generally free. The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) report on the 1997 presidential elections concluded that election authorities "administered a generally efficient process on election day."[4] The United States Commission on Security and Cooperation in Europe report on 1995 parliamentary elections considered the elections "to be free in terms of providing voters with a choice."[5] The Commission on Security and Cooperation in Europe's report on the 1997 parliamentary, county, and municipal elections in Croatia reached similar conclusions.[6]

There is similar consensus among international observers that neither the 1995 nor the 1997 elections was fair. In its report on the 1997 presidential election, the ODIHR observation delegation "concluded that the process leading up to the election was fundamentally flawed and did not meet minimum standards for a meaningful and democratic election in line with OSCE standards."[7] The Commission on Security and Cooperation in Europe's report on the 1995 parliamentary elections noted "the apparent unwillingness of the authorities to permit a truly open electoral system in which all had confidence or a genuinely free media to permit a more competitive campaign period."[8] The commission's report on the 1997 parliamentary elections (for the house of counties) pointed to "restrictive media and the stretching of election rules to the advantage of the ruling party."[9]

Election-related concerns were also expressed by the international community during the so-called "Zagreb crisis." After opposition parties polled better than the ruling Croatian Democratic Union party (Hrvatska Demokratska Zajednica, HDZ) in October 1995 city elections in Croatia's capital, President Franjo Tudjman vetoed four different mayoral candidates proposed by the opposition-controlled city council, installed his own candidate, and organized a referendum to redistrict the city that was boycotted by most of the city's inhabitants. Efforts by the president in April 1996 to dissolve the council and appoint a commissioner in its place were overturned by the Constitutional Court in May of that year. The resulting stalemate was resolved only when the

[3] OSCE/ODIHR Handbook on Election Observation.

[4] OSCE/ODIHR Observation Delegation to the Croatian Presidential Elections 1997. "Statement: Presidential Election in the Republic of Croatia, 15 June 1997."

[5] Commission on Security and Cooperation in Europe, Washington D.C., "Parliamentary Elections in Croatia 1995," February 1996.

[6] Commission on Security and Cooperation in Europe, "The April 1997 Parliamentary, County and Municipal Elections in Croatia," June 1997.

[7] OSCE/ODIHR Observation Delegation to the Croatian Presidential Elections 1997. "Statement: Presidential Election in the Republic of Croatia, 15 June 1997."

[8] Commission on Security and Cooperation in Europe, Washington DC, "Parliamentary Elections in Croatia 1995," February 1996.

[9] Commission on Security and Cooperation in Europe, "The April 1997 Parliamentary, County and Municipal Elections in Croatia," June 1997.

HDZ regained control of the council in the April 1997 elections. The Zagreb crisis remains a potent reminder that the government may refuse to implement the electoral results in the event of an opposition victory, as well as a reminder of the importance of the Constitutional Court in resolving electoral disputes.

Croatia has made progress in some areas since the last parliamentary elections for the house of deputies in 1995. One notable improvement is the growing confidence and strength of civil society in the country. The coalition GLAS '99 (Voice 99) brings together some 140 non-governmental organizations (NGOs) interested in raising public awareness about the importance of free and fair elections, while GONG (Gradjani Organizirano Nadgledaju Glasanje, Citizens Organized to Monitor Elections) is building a network of volunteers to monitor the election process. GONG will also conduct its own parallel tabular vote count (where a mathematical formula is applied to a sample of results to produce an accurate estimate of the overall outcome) which should minimize the possibility of tampering with ballots. Overall, Croatian NGOs, including human rights and legal aid groups, have become increasingly skilled at engaging the public directly, as well as influencing journalists and government officials to help bring about change. Croatia's vibrant civil society indicates its democratic potential and will undoubtedly play an important role in the country's further democratization.

The much improved security situation in the country is also cause for praise. While Serbs face ongoing administrative and legal obstacles to the exercise of their civil rights in Croatia, the violence that characterized the immediate post-war period in former United Nations (U.N.) sectors increasingly belongs to the past.[10] The peaceful reintegration of Eastern Slavonia also represents some progress albeit circumscribed by the exodus of Serbs from the region and the limited returns of displaced Croats. Most recently, Croatia has made some progress in terms of meeting its obligations to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY), transferring a high profile war crimes suspect in August and agreeing to transfer another, although cooperation with ICTY investigations into abuses related to the 1995 Croatian military operations "Storm" and "Flash" remains poor.[11]

[10] The August 1999 murder of a Serb man by Croat returnees in the village of Berak, Eastern Slavonia, was an exception. For details of the ongoing difficulties faced by Croatian Serbs see, Human Rights Watch, "Second Class Citizens: The Serbs of Croatia," A Human Rights Watch Report, volume 11, no.3 (D), March 1999.

[11] In 1995, Croatian forces launched two offensives against Serb rebel-held areas in Western Slavonia (Operation Flash) and the Krajina and Banija-Kordun (Operation Storm), leading to the exodus of more than 200,000 Serb civilians from Croatia. The killing of dozens of mostly elderly Serbs and widespread arson that accompanied the operations have been the subject of investigation by the ICTY.

In the realm of civil and political rights, however, much less progress has been made, despite Croatia's obligations as a member of the Council of Europe, OSCE, and a signatory to the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[12] The assessments of the Monitoring Committee of the Council of Europe Parliamentary Assembly and the OSCE Mission to Croatia, as well as Human Rights Watch's own research, make clear that independence of the judiciary remains an elusive goal in Croatia.[13] The one judicial institution in Croatia with a reputation for independence, the Constitutional Court, has recently been subject to political interference (see below). Lack of media freedom, particularly in the area of electronic media, remains a major constraint to democracy in Croatia. Freedom of assembly remains limited, despite the recent passage of a new law on October 22. And as noted above, Croatian Serb citizens still face discrimination in many areas of life, including the ability to participate in elections. Most directly, the new election law, adopted by the parliament on October 29, is flawed. The law fails to incorporate many of the recommendations on electoral reform repeatedly made by the OSCE, Council of Europe, European Union, and United States governments since 1996, including on the role of state-controlled television, minority representation, and the register of voters.

ELECTION LAW AND RELATED LEGISLATION

Croatia's election law and related legislation have long been a cause of concern among domestic and international observers. Croatia promised to revise its election law as a condition for its admission to the Council of Europe in November 1996. Specifically, Croatia undertook to:

> comply, well before the next elections, with the recommendations made by election observers of the Council of Europe and other international organizations, in particular with regard to the special voting block for the diaspora, minority representation, voter registration lists, voter anonymity, the need to increase the independence of the state broadcasting corporation (HRT) and to undertake a census of the population as soon as possible.[14]

The recommendations referred to by the Council of Europe included the elimination of the special voting district for the Croatian diaspora (ethnic Croats living outside Croatia, in practice mostly in Bosnia), a centralized and more transparent register of voters based on a new census, and the elimination of the requirement that ethnic minorities identify themselves so they can be given special ballot papers, as well as reform of the state broadcasting system. Further recommendations were made by the ODIHR observation mission following the 1997 presidential elections, including the need to remedy the disenfranchisement of refugees and ensure access for nonpartisan election monitors.

Lack of progress led in August 1998 to the preparation of a joint "non-paper" by the OSCE Mission to Croatia, Council of Europe, and ODIHR on electoral reform for Croatia, which provided detailed recommendations on the disproportionate representation of the Croatian diaspora, the disenfranchisement of Serbs who fled Croatia, the role of the media, minority representation, the composition of election commissions, the need for access by domestic nonpartisan election observers, and campaign finance reform. In July 1999, a joint U.S., E.U., and OSCE demarche was delivered to the Croatian government reiterating the need for electoral reform in line with the

[12] Croatia's specific obligations to hold genuine and periodic elections are derived from Article 25 of the International Covenant on Civil and Political Rights; from Protocol 1, article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; and from the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (now OSCE).

[13] See, for example, "Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since May 1999," September 28, 1999.

[14] Quoted in "Draft Report, Croatia" Committee on the Honoring of obligations and commitments by member states of the Council of Europe (Monitoring Committee), January 28, 1999.

recommendations made in the 1998 non-paper. Similar concerns were raised during an E.U. visit to Croatia in October 1999.

Despite repeated recommendations from the Council of Europe and OSCE, of which Croatia is also a member, pressure from the international community, and Croatia's own obligations as a member of the Council of Europe, there has been little progress in electoral reform since 1996. The recently adopted electoral law offers modest improvements in some areas, notably in checking the over-representation of the diaspora in the Croatian parliament and facilitating election monitoring, but fails adequately to address voter registration and the role of the state-controlled media and introduces new problems in other areas, particularly in terms of minority representation.

A related law covering districting, the Law on Electoral Units, creates odd-shaped districts that in their consequences appear to some observers like gerrymandering, and the date of the elections has drawn criticism from domestic and international observers alike because its proximity to the Christmas/New Year period makes monitoring more difficult and is likely to negatively influence voter turnout. The bulk of the concerns outlined in the Council of Europe, ODIHR, and OSCE recommendations remain unaddressed, including the question of disenfranchisement of refugees and the lack of independence for HRT. Recent changes to the membership of the Constitutional Court and a flawed law on freedom of public assembly are also cause for concern, both in the context of the elections and more generally.

One area of improvement offered by the new law is in respect to the representation of the so-called diaspora. International observers have long criticized the ability of ethnic-Croat citizens of other countries (the diaspora) to participate in Croatian elections, a right which in practice applies mainly to some 400,000 ethnic Croats in neighboring Bosnia and Hercegovina. This right derives both from Croatia's citizenship law, which automatically grants citizenship to all ethnic Croats, and from the Croatian constitution, which allows all citizens of Croatia to participate in elections. In addition to criticism about the right of ethnic Croats outside Croatia to vote, international observers have also criticized the manner in which they do so. In the 1995 parliamentary elections, a special non-geographic district was allocated to the "diaspora"giving them the right to choose twelve representatives for the house of deputies, giving them a disproportionate level of representation compared to other voters. Given that the "diaspora" has traditionally supported the HDZ, this system was widely perceived as a means of delivering a guaranteed block of seats to that party, thus discriminating against citizens of other political persuasions.

Human Rights Watch is also concerned with the citizenship law, especially as it makes it difficult for Croatian Serbs outside the country to assert the right to citizenship, leaving some stateless and many unable to return to Croatia or to exercise their rights as citizens to participate in elections.[15] However, since the right of the ethnic Croat diaspora to vote is guaranteed both by the constitution and law on citizenship, Human Rights Watch does not feel that objections to the right per se are appropriate. What is of legitimate concern, however, is the disproportionate representation of the diaspora in the Croatian parliament with twice as many seats in the parliament per voter in the diaspora district than in regular districts. This arrangement not only de facto favors one party over others but discriminates against other Croatian citizens, including Croatian Serb refugees.

The new election law addresses those concerns only partly. Under article 44 of the new law, the number of representatives chosen by the diaspora will be proportionate to the number of diaspora voters who participate in the election, according to a formula derived from the number of voters per seat in the electoral districts inside Croatia. This is a substantial improvement over the previous law, in that the proportion of seats allocated to the diaspora will now be approximately equal to the proportion of seats allocated to the remainder of the population. In addition,

[15] For a fuller examination of Croatia's citizenship law, see Human Rights Watch, "Second Class Citizens: The Serbs of Croatia," and Human Rights Watch/Helsinki, *Civil and Political Rights in Croatia* (New York: Human Rights Watch, 1995), pp. 8-15. See also, UNHCR Regional Bureau for Europe: "Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia," European Series, vol. 3, no. 1, (June 1997).

since the diaspora historically has supported the HDZ, the law still potentially offers the ruling party an unfair advantage over other parties by the margin of the number of seats eventually allocated to the diaspora. The recommendation of GLAS 99 that the diaspora should no longer have a special voting district was introduced as an amendment during the parliamentary debate on the election law, but failed to be adopted.

Another area of improvement relates to the right of domestic election observers to monitor the elections. Article 107 of the law specifies that monitoring organizations must submit a list of the names of their observers to the National Election Commission eight days before the vote, and that the National Election Commission must provide accreditation "three days before the vote at the latest." This provision allays some concerns that accreditation would be issued too late for distribution, thereby limiting access to polling places. In addition, the law spells out that all organizations "which are legally registered as organizations that work in the field of independent monitoring of electoral procedure and/or promotion of human or civil rights" will be permitted to monitor the elections.

Some aspects of the law have been met with dismay, however. The staff of the Croatian Law Center have indicated to Human Rights Watch that they regard some aspects of the new election law as worse than the election laws in 1992 and 1995, especially in terms of the political representation of minorities. They noted that in 1992, Serbs had thirteen representatives in the parliament. In 1995 that number was reduced to three in the house of deputies and two in the house of counties, following the suspension of the provisions of the 1992 constitutional law on the rights of minorities related to political representation (constitutional laws enjoy the same superior legal status as the constitution).[16] Under a system of positive discrimination, minorities were also permitted to vote twice, once for the minority list and once as ordinary citizens on the ordinary geographic lists, a practice that was abandoned in 1995. In article 16 of the 1999 election law, the number of seats for Serbs in the house of deputies is reduced to one, while the representation of the other minorities remains the same.[17] Positive discrimination for minority voters has not been reintroduced. Given that article 38 of the new electoral law increases the number of electoral districts in Croatia and at the same time increases the number of representatives in each district from twelve to fourteen, the reduction in the number of seats seems particularly egregious.

The importance of minority representation in parliament to the overall treatment of minorities in Croatia should not be overstated. As Veljko Dzakula, the president of the Serb Democratic Forum, noted that, in practical terms "it doesn't really make any difference" if there is one representative or three.[18] Mr. Dzakula pointed to the broader failure of Croatia to address the suspended provisions of the constitutional law on minorities as the real obstacle. It is certainly the case that the presence of three representatives out of one hundred and twenty-seven in the House of Deputies has not been sufficient to enable Croatian Serb citizens to exercise their civil and political rights, or in many cases to return to their homes or even to Croatia. The issue of the inability of Croatian Serb refugees to assert their right to citizenship and hence to vote in elections is undoubtedly a more significant constraint to the exercise of those rights than the reduction in the number of seats. Nevertheless, the symbolism of such a move is that it further marginalizes Croatia's Serbs from participation in the life of their country at a time when post-war normalization should be leading to their further reintegration into Croatia. In addition, the reduction robs the House of Deputies of what MP and president of the Serb National Council Milorad Pupovac describes as "an additional tool for our reintegration into Croatian society" and silences two-thirds of its voices for the particular

[16] The full title of the law is "The Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia." One of the conditions of Croatia's accession to the Council of Europe was to amend the law in order to resolve the issues covered by the suspended provisions. To date, no such amendments have been made.

[17] The Italian minority, for example, continue to have one seat in the house of deputies, although it forms a much smaller percentage of the Croatian population even than those Serbs currently resident in Croatia.

[18] Human Rights Watch interview, Veljko Dzakula, president, Ankica Gorkic, legal adviser, Serb Democratic Forum, Zagreb, October 21, 1999.

concerns of Serbs in Croatia.[19] Most of all, it highlights the urgent need to revise the constitutional law on minorities in accordance with Croatia's obligations as a member of the Council of Europe.

There are also concerns about the shape of electoral districts among Croatian NGOs and opposition parties. In particular, the decision under the law on electoral units to divide the city of Zagreb into four different, mainly rural, districts strikes many as gerrymandering (an attempt to predetermine the outcome of the elections in a particular district thereby undermining the fairness of the elections as a whole).[20] This assessment is underscored by the strength of support for the opposition in Zagreb compared to their relatively weaker support in adjacent rural areas, where HDZ tends to poll better. While the charges of gerrymandering should not be overstated, the unusual districts further call into question the commitment of the ruling party to create the conditions necessary for fair elections.

[19] Human Rights Watch interview with Milorad Pupovac, Zagreb, October 29, 1999.

[20] During the debate on the law in the Croatian parliament on October 28, the Social Democratic Party and other members of the opposition raised objections to the division of Zagreb into four units. The objections were rejected by the HDZ.

There have also been concerns expressed about the timing of the election. The decision to hold the elections after the expiry of the current term of the Constitutional Court has drawn criticism from the current president of the court, Jadranko Crnic, who has made public his view that the elections should have been held well before the expiration of the term of the current Constitutional Court on December 6.[21] Crnic argued that given the crucial role played by the court in resolving electoral disputes (see section below), it is inappropriate to have one court active during the campaigning and a new court active during the vote and counting of results. (The outgoing court was eventually able to address this problem on December 2 by appointing a council to resolve electoral disputes consisting of the only three members of the court whose terms do not expire.) The original date of the elections, December 22, drew widespread criticism from the church, opposition parties and domestic NGOs who argued that the date was too close to Christmas and was likely to have a negative impact on voter turnout. The new date for the elections, January 3, 2000 has elicited similar concerns from the European Union and opposition parties in Croatia.

DISENFRANCHISEMENT OF CROATIAN SERBS

The government has made little progress since the 1997 presidential elections in tackling the large scale disenfranchisement of Croatian Serb citizens, despite repeated recommendations from the Council of Europe, ODIHR, the European Union, and the OSCE Mission to Croatia. Problems with the citizenship law, slow consular procedures, and inadequate out-of-country voting arrangements will make it difficult for many refugee Serbs to exercise their political rights as citizens of Croatia in the 1999 parliamentary elections. Some of the blame, however, must be laid at the feet of the European Union, the United States government, and the OSCE who have focused on limiting polling places for Bosnian Croat voters (because of concerns over fraud, and in some cases, a wish to limit their participation in elections in Croatia) instead of assisting Croatian Serb refugees in Bosnia and Hercegovina and the Federal Republic of Yugoslavia to vote. Political leaders in the Croatian Serb refugee communities in Bosnia and FRY must also bear some responsibility for insisting on unrealistic conditions for return and failing to encourage refugees to exercise their right to Croatian citizenship and to vote.

Estimates vary widely, but it is safe to assume that approximately half of Croatia's Serb population in 1991 are now living outside the country as refugees.[22] Although around 35,000 Serbs have returned to Croatia since 1996, an equal number have departed, most notably from Eastern Slavonia. Although the Croatian government's 1998 Program for Return has had some success in facilitating organized return to Croatia, most Serbs continue to return at their own initiative, through so-called "spontaneous" means. Lack of documentation proving citizenship continues to impede the return of Serbs.[23] Although almost all are eligible for citizenship either by birth or naturalization, many refugee Serbs failed to obtain Croatian citizenship documents following Croatia's independence in 1991. Frequently lacking documents, Serb refugees often find it difficult to prove that they are eligible for citizenship, especially if they obtained citizenship by naturalization. Croatia's citizenship law, which follows a *jus sanguinis* model where citizenship is determined by descent rather than residence**,** makes it more difficult for long-term Serb residents to obtain citizenship by naturalization than it does for ethnic Croats with no history of residence in Croatia.

Serb refugees must travel to Croatia in person to apply for a citizenship certificate or passport. In order to facilitate the process of obtaining citizenship documentation, Croatia adopted procedures for individual return in

[21] See, for example, "Elections in the first week of November, at the latest (interview with Jadranko Crnic, the president of the Constitutional Court of Croatia)," *Novi List* (Rjieka), September 6, 1999.

[22] According to the 1999 census, the Serb population in Croatia was 581, 663 or approximately 12 percent of the total population of 4,784,265. Low estimates from late 1998 suggest that the Croatian Serb refugee populations in FRY and Bosnia are 280,000 and 40,000 respectively.

[23] For more information on issues related to the return of refugees and citizenship, see Human Rights Watch, "Second Class Citizens: The Serbs of Croatia."

1998 that permit persons to apply at Croatian embassies and consulates abroad for a *putni list* (travel letter), which enables them to travel to Croatia to obtain a certificate of citizenship and passport. In addition to the consular departments at the Croatian embassies in Belgrade and Sarajevo, part-time consulates were opened during 1998 in Banja Luka in Bosnia and Kotor and Subotica in FRY, areas with substantial Croatian Serb refugee populations. Interruptions to the operation of these consulates and complaints in some cases about slow processing of applications, however, mean that only a fraction of those eligible for citizenship have been able to apply for the necessary travel letter. Consequently, many Croatian Serb refugees remain without citizenship documentation despite the new procedures.

The Croatian government has rejected a recommendation by the European Union that Croatian Serbs who can demonstrate residence prior to 1991 be allowed to vote even if they do not have Croatian documents verifying citizenship, arguing that under the constitution only citizens may vote and such persons are not citizens. As a result, any Croatian Serb who has a legitimate claim of citizenship but does not possess documents proving Croatian citizenship will remain disenfranchised until such time as he or she is able to obtain such documentation.

Many Croatian Serb refugees with citizenship documentation will also find it difficult to exercise their right to vote. The new election law makes no reference to voting arrangements for refugee Croatians who are Serbs. Articles in the law referring to "persons who do not have a permanent residence in the republic of Croatia" concern only the ethnic Croat diaspora (predominantly Bosnian Croats) who have their own special district. All other voters are expected to have permanent residence in Croatia, if they are outside the country at the time of the vote. According to article seven of the law:

> Voters who have residences in the Republic of Croatia and are on the day of the elections outside the Republic of Croatia vote in the diplomatic-consular representative offices of the Republic of Croatia for representatives of a constituency as determined by their residence on the territory of the Republic of Croatia.[24]

The law thereby requires that any citizen outside Croatia (other than members of the diaspora) who wishes to vote must be registered in a constituency in Croatia. Provided that a person is registered in a constituency in Croatia, he or she may vote abroad in the election.

Voter registration is governed by a 1992 law that is widely regarded as problematic, primarily because of concerns over fraud related to the difficulty of removing persons from the register of voters. The war in Croatia meant that in some areas voter lists were incomplete or destroyed, so a new register of voters was carried out in those areas in 1995. The matter is made more complex by the fact that no central register of voters exists, with lists instead being compiled and maintained at the constituency level. Persons who did not vote in 1995 (including the many Croatian Serbs who fled the country) were not covered by the re-registration exercise. Although it is theoretically possible for Croatian Serbs with citizenship documents to be added to the register, it would require them to contact the local authorities in the municipality in which they were formerly resident to check if they are listed on the register. If they were able to obtain documentary proof of residence in that constituency, they could take that proof together with their citizenship documents to a Croatian embassy or consulate two weeks prior to the elections in order to be added to the register. Of course, in order to benefit from this procedure, one would have to be aware of it. However, there has been no serious effort to inform refugees of this option.

Even if a Croatian Serb refugee is listed on the register of voters and has the documentary proof that he or she is a citizen, it may still be difficult or impossible to vote. As article seven of the election law states, voting outside Croatia will take place in "diplomatic-consular representative offices." The lack of a public information campaign to encourage refugee Serbs in Bosnia and FRY to vote contrasts with daily public service announcements

[24] Law on the Election of Representatives to the Croatian State Parliament, adopted October 29, 1999. (Unofficial translation.)

in Croatia advising Bosnian Croat refugees about forthcoming municipal elections in Bosnia. The lack of arrangements for public transportation for voters is also problematic. In Yugoslavia, where the bulk of Croatian Serb refugees currently reside, access to the Belgrade embassy or consulates in Subotica and Kotor may be difficult, particularly for elderly refugees, although the decision under article 80 of the election law to allow two days for out-of-country voting will ease the situation somewhat.

Serb leaders in Croatia are understandably disappointed by the failure of the Croatian government to take any measures to facilitate voting by Croatian-Serb refugees. According to the president of the Serb Democratic Forum, Vjelko Dzakula, "one year ago, we raised this problem with Ljerka Mintas-Hodak [the deputy prime minister of Croatia] and all the parliamentary parties. We have had an insufficient response from Mintas-Hodak and no response at all from the parliamentary parties."[25] The international community also bears some responsibility for failing to make the disenfranchisement a priority in its dealings with Croatia. With the exception of the recent E.U. suggestion, little effort appears to have been made to develop ways to tackle the disenfranchisement of Croatian Serb refugees.

Although the issue of the disenfranchisement of many Croatian Serbs was raised in the OSCE Mission to Croatia's May and September 1999 reports to the OSCE Permanent Council, as well as in the August 1998 joint OSCE, E.U., and Council of Europe "non-paper," some senior officials in the OSCE Mission to Croatia have suggested to Human Rights Watch that the mission lacked the mandate to practically address the issue of disenfranchisement with the Croatian government.[26] Several senior Western diplomats indicated to Human Rights Watch that they were more concerned with trying to limit voting by Bosnian Croat voters than with facilitating voting by Croatian Serbs, both because of concerns over fraud and a desire to limit the influence of Bosnian Croats in Croatian politics. They also acknowledged that this focus had weakened or eclipsed their ability to argue for assistance to Croatian Serb refugees wishing to vote.[27] Although the wish to reduce electoral fraud is a valid goal for international policy toward the elections, activities to limit the participation of Bosnia Croat voters in the elections per se appear to support a strictly political, rather than a rights-based agenda, while also having the effect of reinforcing the disenfranchisement of Serb citizens of Croatia who happen to be refugees. The sole voice of principle was the international community's high representative in Bosnia, Wolfgang Petritsch, who made public statements on the need for all Croatian voters living in Bosnia, Serb and Croats, to be able to exercise their rights as citizens to vote.[28]

The ambivalent role of some leaders among the Croatian Serb refugee communities in Bosnia and Yugoslavia toward the participation of the Croatian Serbs in the Croatian elections must also be acknowledged. On the positive side, the Belgrade-based Association of Serb Refugees from Croatia made a public statement on September 18 urging Croatian Serbs to vote in the parliamentary elections irrespective of where they were currently residing. The statement followed an August letter from the Association to the U.S. ambassador in Croatia, William Montgomery, asking him to use his influence to facilitate the right of refugees to vote.

FREEDOM OF EXPRESSION

[25] Human Rights Watch interview, Veljko Dzakula, president, Ankica Gorkic, legal adviser, Serb Democratic Forum, Zagreb, October 21, 1999.

[26] Human Rights Watch interview with OSCE officials, Zagreb, October 22, 1999.

[27] Human Rights Watch interviews with western diplomats, October 22 and 28, 1999.

[28] Western Envoy Urges Fair Access to Croatia Poll, Reuters, November 3, 1999.

The ability to make a freely informed choice in elections depends on the ability freely to express ideas and receive and impart information, including through the media. Yet reports from international observers on the 1995 parliamentary and 1997 presidential elections make clear that the media in Croatia was not free from state interference during the election period, to the detriment of the democratic process.[29] This is particularly true in television, the medium under the greatest influence of the state. This view is echoed in various reports issued by the Council of Europe Monitoring Committee and the OSCE Mission to Croatia, and was the subject of an October 1998 "non-paper" by the OSCE, Council of Europe, E.U. and U.S. governments that provided recommendations on the reform of the media in Croatia. The issue of media freedom in Croatia was also critically examined by the OSCE Representative on Freedom of the Media, Freimut Duve in a report issued in March 1999.[30]

Television is by far the most influential medium in Croatia. It is also the medium under the greatest control of the state. At present Croatia has three national channels, all of which are under the state broadcaster, Croatia Radio Television (HRT, Hrvatska Radiotelevizija). The half-hour news broadcast shown at 7:30 p.m. (generally referred to as *Dnevnik*, the news), which is shown simultaneously on HRT1 and HRT 2, is by far the prime news source for most Croatians. Estimates vary, but at least 50 and perhaps as much as 70 percent of the adult population of Croatia watches the *Dnevnik* daily. By contrast, daily newspapers are too expensive for many Croatians. In his March 1999 report, the OSCE Representative on Freedom of the Media was unequivocal in his assessment of the *Dnevnik*:

> Government or ruling party officials are still granted virtually unlimited access to the [19.30 news] bulletin. Far from questioning these officials, the journalists either make no comment or endorse the official's arguments and assessments. Opposition politicians are rarely given an opportunity to comment directly on the official's arguments and assessments. Information and views which reflect poorly on the Government or ruling party are often distorted or omitted.[31]

This assessment can also be seen in the media monitoring reports produced by the OSCE Mission to Croatia and the U.S. embassy in Zagreb.[32] Despite recent reports of modest improvements in the balance of coverage, during the week of October 5 to 11, the government and ruling party combined received more than 1,000 seconds of coverage on the *Dnevnik*, while none of the opposition parties received more than one hundred seconds.[33] Given the parliamentary regulation from November 1999 granting equal time to all parties on state television, it is notable that the government of Croatia received the bulk of the coverage rather than the HDZ, which received around twice the coverage of any other party that week but still less than 200 seconds. The analysis reflects "sound bites" rather than screen appearances, since statements by opposition politicians are generally summarized by the reporter, whereas government and ruling party officials are generally allowed to be heard in their own voices. In terms of total time, the government received almost 1,500 seconds of positive coverage and 2,500 seconds of balanced coverage, whereas none of the opposition parties received more than 600 seconds of balanced coverage, and most received no positive coverage at all.[34]

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[29] See, for example, Commission on Security and Cooperation in Europe, Washington DC, "Parliamentary Elections in Croatia 1995," February 1996; OSCE/ODIHR Observation Delegation to the Croatian Presidential Elections 1997; "Statement: Presidential Election in the Republic of Croatia, 15 June 1997."

[30] OSCE Representative on Freedom of the Media, "Current Situation of the Media in Croatia," March 1999.

[31] OSCE Representative on Freedom of the Media, "Report on Media in Croatia," March 1999.

[32] OSCE Media Monitoring Project 1999-2000, Analysis of HRT Programming (weekly); U.S. Embassy Weekly Report (HRT Coverage). The OSCE media monitoring reports will form part of ODIHR overall assessment of the electoral process.

[33] OSCE Media Monitoring Project, Analysis of HRT programming , October 5-11, 1999.

[34] Ibid.

Analysis of all programming across the three HRT channels indicates that the imbalance of coverage is not confined to the evening news. According to OSCE media monitoring for October 5 to 11, the government received more than 4,000 seconds of positive coverage and nearly 6,000 seconds of balanced coverage, with less than one hundred seconds of negative coverage. In addition, the HDZ received almost 4,000 seconds of balanced coverage.[35] By contrast, none of the main opposition parties received more than 2,000 seconds of balanced coverage. When one examines opportunities for politicians to speak directly (so-called "sound-bites") rather than simple coverage, the situation is even more skewed. The government received more than 2,000 seconds and the HDZ more than 400 seconds across all programs, while the opposition party with the most coverage, the Peasant's Party, received around half that of HDZ. Cumulative analysis from May 1 to October 25, 1999 from the U.S. embassy indicates that the government and HDZ received more than 1,800 minutes of positive or balanced reporting, while the main six opposition parties received slightly more than 500 minutes of balanced reporting and no positive reporting during the same period.[36]

The ruling party's control over HRT is a significant factor in Croatian politics. Although there is a growing perception among domestic and international observers that its importance is overstated, television undoubtedly plays an important role in shaping the opinions of ordinary Croatians, as it does in other countries. While the frequently heard argument that the HRT was the critical factor in ensuring the re-election of President Tudjman in 1997 is probably an exaggeration, the unwillingness of the ruling party to relax its grip on the state broadcaster can only be explained in political terms. Albert Kapovic, who manages programs at the Croatian Journalists' Association, suggested that HRT's editorial content is designed to "create the notion that it is impossible to change ...[in order] to foster abstention and apathy."[37] Given the current level of support for the opposition, apathy and abstention among voters would probably be to the benefit of the HDZ. Yet the degree of support for the opposition indicates the limits of HRT's influence. One analyst noted to Human Rights Watch that "support for the opposition is very strong despite the media and the omnipresence of HDZ on television."[38] Its importance may be somewhat overstated by international observers and the Croatian opposition parties but HRT remains an important tool of influence for the ruling party.

Efforts towards reforming television in Croatia follow two tracks. The first is an attempt to reform HRT itself. The appointment in 1998 of Ivan Vrkic, then a respected member of the national committee on reconciliation, was greeted as a positive development by international and domestic observers alike. But Vrkic's efforts at reforming HRT have had little effect, according to Croatian journalists, mainly because the editor-in-chief and the governing HRT Council remain under strict HDZ control. Nor has international pressure produced noticeable results, despite Croatian commitments as a member of the Council of Europe to reform HRT, and similar recommendations by the OSCE and the Council of Europe on numerous occasions.

Revisions in October 1998 to the law on telecommunications, which regulates HRT, did not reflect Council of Europe and OSCE recommendations to convert HRT into a public service broadcast service. Nor did HRT follow the recommendations of the Council of Europe, OSCE, and many Croatian journalists to privatize its third channel, HRT3, as a means of diversifying content on national television. Rather than privatize HRT3, the amendments to the law licensed the creation of a fourth private national channel which most observers do not regard as financially viable given the limited advertising revenue already shared among the three HRT channels.[39] On a positive note, the amount of advertising time allowed on HRT was reduced by the amendment from 15 percent to a maximum of 10 percent. Expectations about the possibility of reform under an opposition government are low. Damir Matkovic, the president of Forum 21, the association of television journalists in favor of reform of

[35] Ibid.
[36] U.S. Embassy, Weekly Report (HRT coverage), October 16 - 25, 1999.
[37] Human Rights Watch interview with Albert Kapovic, Croatian Journalists' Association, October 18, 1999.
[38] Human Rights Watch interview with Davor Gjenero, Croatian Law Center, Zagreb October 20, 1999.
[39] In addition to advertising revenues, HRT also collects a mandatory license fee from some 800,000 households.

HRT, described the state broadcaster as "the last remaining fortress of the HDZ." Others have noted that the culture of HRT, where journalists see themselves as civil servants, will be difficult to change.

Another track of reform is to create a national alternative to HRT. As noted above, the October amendment to the HRT law granted the right for a new license to be issued to a fourth national channel, rather than privatizing HRT3 as the international community and Croatian journalists had suggested. Concerns about the financial viability of a fourth national channel limited the number of consortia interested in bidding for the license, and the license was eventually granted in July 1999 to Nova television, a consortium closely linked to Ivan Pasalic, President Tudjman's most influential adviser.[40] Immediately after being granted the license, Nova made it clear that it was interested in broadcasting on HRT3's frequencies rather than investing in the estimated millions of dollars of infrastructure required to create a fourth national broadcaster. Although the Nova television consortium includes Europa Press Holdings, publisher of *Jutarnji List*, Croatia's most independent national daily newspaper, the strong links between Nova and Pasalic raise doubt about Nova's commitment to produce independent news and current affairs programming.

A more modest, but possibly more significant opportunity to create an alternative television network was offered by the October 1998 amendment to the Law on Telecommunications. Under the amended law, local television stations may network and share programming with one another. The International Research and Exchanges Board (IREX), a U.S. government-funded organization, is currently developing an initiative that would allow independent local television stations in Croatia to network using fiber-optic technology. The network, which would cover between 60 and 70 percent of Croatia, would include independently produced news broadcasts from Zagreb. International agencies and most journalists seem encouraged by the initiative, although there is some concern at Forum 21 that the location of the news production facilities at Open Television (OTV) in Zagreb might compromise the editorial independence of the news broadcasts, because of OTV's frequent pro-government stances.

Croatia has several local radio stations that produce serious news content, but lacks a national independent radio station with a news focus. At the local level, Zagreb is well served by Radio 101, which, although a commercial station, takes a public service approach to its news content and offers balanced content, including call-in programs. Outside Zagreb, independent radio stations frequently face commercial difficulties due to limited advertising revenue, and some have come under political pressure from HDZ-controlled local authorities. Among the few national radio stations outside Croatian Radio (a network of state radio stations operated by HRT), only Otvoreni Radio (which covers most of Croatia) can be considered to have any real news content, although this is limited. The lack of an independent national radio station with extensive news content can be largely explained by the fact that broadcast licenses are granted by the HDZ-controlled Telecommunications Council, although the limited potential of advertising revenues in some regions of Croatia is also a factor.

The situation in the print media is considerably more positive than in television or radio. Croatia has several independent daily newspapers that are frequently critical of the government and ruling party (including the relatively new *Jutarnji List*) as well as pro-government dailies, and three critical and independent news weeklies that offer news and analysis. Nevertheless, independent journalists and newspapers face official and semi-official pressure through the use of criminal libel laws that allow judges to grant excessive damages and through slow or no payments by the near bankrupt state-owned distributor Tisak. In addition, few Croatians can afford to buy a daily newspaper, leaving the audience for their critical analysis limited primarily to urban audiences in Zagreb and other cities, although the news weeklies do have a wider readership.

[40] See, for example, *Nacional*, "Marketing limitations passed in the Parliament present one more important victory of Pasalic's faction," July 7, 1999; and *Jutarnji List*, "Nova TV got national concession; Marcinko to be director, Lilic main editor," July 13, 1999. Pasalic is also a member of the Telecommunications Council which granted the license.

Two news weeklies in particular, the Split-based satirical newspaper *Feral Tribune*, and the Zagreb-based *Nacional*, have come under significant political, legal, and financial pressure. *Feral Tribune* combines somewhat bawdy satire with serious investigative journalism and a willingness to examine uncomfortable aspects of Croatian society, including war-time abuses and corruption, while *Nacional* consistently breaks stories connecting members of the government and ruling party to scandal, and offers a pro-democracy liberal perspective with a sensationalist streak. Croatia's criminal libel law offers special protection for the five highest officials in the Croatian state and protects public figures against statements that cause "mental anguish" even if the statements are factually correct. Although the OSCE Mission to Croatia's spokesperson indicated to Human Rights Watch that a large number of libel cases brought against newspapers are ultimately thrown out of court, he noted that it was not clear if there has been any improvement in the last year.[41] What is clear is the damaging financial consequences of existing rulings against independent newspapers in Croatia.

The sum of the damages owed by *Feral Tribune* as a result of libel cases is estimated by the paper at 4 million Deutsche Marks (approximately U.S.$ 2.22 million), with between one hundred and 150 cases still pending. A senior correspondent for the paper, Marinko Culic, indicated that "in some cases, courts have reduced damages and thrown out cases, but we're not sure if it's a trend."[42] Since its founding in 1995, *Nacional* and its editor-in-chief Ivan Pukanic, have been the subject of frequent libel charges. The paper and its editor currently face 107 pending libel cases. According to Pukanic, the paper was threatened with closure earlier in the year after the paper failed to pay 70,000 Deutsche Marks in libel damages.[43] A new libel fund at the Croatian Journalists' Association launched on October 18 should help the situation, but the fund only covers legal fees, which are often relatively small compared to the size of damages awarded. Official statistics indicate that more than 700 libel suits were filed between 1994 and 1997, almost exclusively against independent newspapers and journalists.[44]

Even more serious are the financial problems faced by independent newspapers caused by the near collapse of Tisak, the main print distributor in Croatia. As small businesses, independent newspapers have been particularly affected by the lost or delayed revenue. *Nacional*'s editor-in-chief Ivan Pukanic says that Tisak currently owes the newspaper 3 million Croatian Kuna (approximately $430,000). *Feral Tribune* is owed 2 million Croatian Kuna (approximately $286,000) by Tisak and is facing bankruptcy since it finds itself unable to pay its debts. The near monopoly on distribution enjoyed by Tisak leaves independent papers little choice but to continue to use them as their distributors, despite the payment delays.

In addition to financial and legal pressure, some independent journalists have also faced threats and intimidation. Ivan Pukanic, the editor of *Nacional*, had his office and apartment searched by anti-terrorist police after *Nacional* published allegations in June that the secret police had been involved in fixing the finals of the national soccer championships and had wiretapped the telephones of sports officials and journalists.[45] The home of Robert Bajrusi, a *Nacional* journalist who co-authored the article, was also searched. In July, Hvoje Appelt, a journalist for *Jutarnji List*, received death threats after reporting on torture and maltreatment of inmates in the Lepoglava prison.[46] After criticizing hate speech on a television broadcast by Mladen Schwartz, the head of the New Croatian Party of Right, Natasa Kalbantic, a broadcaster and prominent member of Croatia's Jewish community, was named on a pamphlet that accused her, together with other members of the Croatian Jewish community and then-OSCE Ambassador to Croatia Tim Guldimann, of "destroying Croatia." The pamphlet, which was signed by Schwartz's party, called for the murder of Kalbantic and the others named on it.

[41] Human Rights Watch interview with Peter Palmer, OSCE spokesperson, Zagreb, October 20, 1999.
[42] Human Rights Watch interview with Marinko Culic, Zagreb, October 27, 1999.
[43] Human Rights Watch interview with Ivan Pukanic, Zagreb, October 29, 1999.
[44] Cited in OSCE Special Representative on Freedom of the Media, "Report on Media in Croatia," March 1999.
[45] "Weekly 'Nacional' object of harassment," Reporters Sans Frontieres/IFEX Alert, June 30, 1999; "CPJ protests harassment of Nacional," Committee to Protect Journalists/IFEX Alert, June 17, 1999.
[46] Croatian Helsinki Committee for Human Rights, Statement 103, July 20, 1999.

FREEDOM TO MONITOR

The election commitments of OSCE member states were enumerated in the concluding document of the organization's 1990 Copenhagen meeting on the human dimension. According to article 8 of the document:

> The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process in States in which elections are taking place. They therefore may invite observers from any other CSCE [now OSCE] participating States and any appropriate private institutions and organizations that may wish to do so to observe the course of their national election proceedings, to the extent permitted by law.[47]

Following the practice of OSCE states, Croatia invites international observers to observe its national elections. Domestic monitoring in national elections to date has been limited to observers from political parties. In the 1997 elections, where domestic monitoring was not regulated by the election law, the National Election Commission refused GONG's request to monitor the elections. During 1998, GONG requested permission to monitor a series of local elections and was granted permission by the local election commission in Osijek to monitor local elections there. Local authorities refused a subsequent request to monitor the local elections in Dubrovnik. In October 1998, GONG, together with the Croatian Helsinki Committee, took their complaint to the Constitutional Court, which upheld their right to monitor local elections.

Prior to the election law, GONG officials expressed concern that the timetable for submission of lists of monitors and the subsequent issuance of accreditation by the National Election Commission would not be included in the law, leaving it to the discretion of the commission, which might issue accreditations too late for distribution to observers. Despite their fears, article 107 of the adopted law indicates that lists of monitors have to be given to the National Election Commission eight days in advance and that accreditation will be delivered by the commission at least three days in advance of the elections. Article 107 also states that "the National Election Commission shall permit the monitoring of electoral procedure to all organizations, which are legally registered as organizations that work in the field of independent monitoring of electoral procedure and/or promotion of human or civil rights" provided that they "request permission from the National Election Commission."[48] Following the adoption of the law, GONG representatives told Human Rights Watch that they did not expect to have problems monitoring the elections, although they remained concerned that the possible limits on the number of observers in each polling place might prevent them from gaining access to all polling places.[49]

FREEDOM OF ASSEMBLY

[47] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE [now OSCE], June 29, 1990.

[48] Law on the Election of Representatives to the Croatian State Parliament, adopted October 29, 1999. (Unofficial translation.)

[49] Human Rights Watch telephone interview with Aleksandra Kuratko, GONG, Zagreb, November 22, 1999.

Freedom of assembly, the right to hold public gatherings, including political rallies and mass public protests, is an internationally protected right and is integral to the holding of free and fair elections.[50] Croatia's record on guaranteeing the right of freedom of assembly is at best mixed, and serves to underscore the importance of Croatia's constitution and the role of the Constitutional Court in upholding it. The previous Law on Public Assembly gave discretion to municipal and county councils to determine where public gatherings can be held. In the case of Zagreb, this allowed the city authorities to prohibit a large protest organized by trade unions and opposition parties in 1998 from taking place in the main square in Zagreb. Bans of rallies by right-wing political parties in several towns in formerly-occupied parts of Croatia and in the capital, Zagreb, led to a challenge to the law in the Constitutional Court in March and April 1999. The court ruled that the constitution did not grant local authorities the discretion to "regulate issues relating to the constitutional rights and freedoms of citizens, therefore, neither to pass regulations concerning the right to public assembly and peaceful protest."[51] By its decision, the court also annulled the relevant provision of the Law on Public Assembly.

A new Law on Public Assembly includes a list that indicates one location in each town where a public gathering can be held without permission from local authorities. However, in the case of Zagreb, the city council had already designated several locations where public gatherings could be held without permission. (None are locations close to the center of the town, where people naturally congregate). In practice, therefore, the new law is not a significant improvement, especially in the case of Zagreb. The law also appears to be unconstitutional because the constitution, and the Constitutional Court's March 1999 ruling, state clearly that it cannot be left to the discretion of local authorities to determine where public gatherings can be held. Instead, this must be specified by the law. According to the new law, gatherings cannot take place near locations such as hospitals, schools, national parks, and highways. It is left to local authorities to interpret whether a proposed demonstration is close to one of those locations.

THE ROLE OF THE CONSTITUTIONAL COURT IN THE ELECTORAL PROCESS

The effective resolution of electoral disputes is central to the integrity of any electoral process. Challenges to controversial outcomes or allegations of interference must be resolved in an impartial manner in such a way that the final results can be respected by the winner and loser alike. According to article 98 of the election law, electoral disputes are resolved in the first instance by the Central Election Commission. The Central Election Commission is regarded by many Croatian NGOs as biased toward the ruling party, as demonstrated by its unwillingness to permit domestic nonpartisan election monitoring in the 1997 election.[52] Ultimate responsibility for the resolution of electoral disputes rests with the Constitutional Court, however. Article 100 indicates that any decision by the Central Election Commission can be appealed to the Constitutional Court, which also supervises "the legality and constitutionality of the elections" (article 96). In a positive development, the outgoing Constitutional Court established a Constitutional Court Council for resolving electoral disputes on December 2. The council consists of the three members of the outgoing court who will also be members of the new court, which will ensure continuity in the court's work on the elections and should enhance public confidence in the integrity of the electoral process.

[50] Freedom of Assembly is guaranteed under article 21 of the International Covenant on Civil and Political Rights and under article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Croatia has signed and ratified both treaties.

[51] Ruling of the Constitutional Court of the Republic of Croatia, No. U-1-241/1998; March 1999. (Unofficial translation.)

[52] The membership of the Central Election Commission, enumerated in article 53-57 of the election law, consists of five permanent members, including the president of the Supreme Court as president of the commission, and six members appointed for the elections—three from the HDZ and three from the opposition. In previous elections, the president of the Supreme Court, an HDZ appointee, generally supported the positions of the ruling party.

As noted above, the Constitutional Court can also play a vital role in the post-electoral period, ensuring that the will of the people is not overruled, as it was during the Zagreb crisis in 1996, when the executive overturned a presidential decision dissolving the opposition-controlled Zagreb city council. More generally, the Constitutional Court has consistently served as a check on the excesses of executive authority that contravene the Croatian constitution. The court's principled upholding of the constitution is remarkable given the domination of the ruling HDZ party in Croatian political life since 1991, and the weakness and dependence of the judiciary as a whole. Although the government has frequently failed to implement its rulings, the court's insistence on constitutionality and the rule of law have made it one of Croatia's most respected institutions both at home and abroad. Moreover, the new Constitutional Law on the Constitutional Court adopted in September 1999 clarifies the obligation of government agencies and other state institutions to implement decisions of the court and allows appeals before all other means are exhausted, including cases of administrative silence, which human rights lawyers in Croatia regard as a positive development.[53]

[53] Administrative silence is the practice of institutions failing even to respond to requests or appeals, thereby preventing the claimant from obtaining proof that the request has been refused. In theory, the Administrative Court hears such cases, but a huge backlog and complex procedures limit its usefulness.

Recent rulings by the Constitutional Court include a determination that the government's interpretation of the conditions for citizenship by naturalization was incorrect, thereby greatly increasing the chances of Croatian Serb refugees obtaining citizenship; a decision that confirmed the right of individuals dispossessed of property to receive adequate compensation if the property could not be returned; and a decision that strengthened the right to public assembly (discussed above). A 1999 report by the Council of Europe Monitoring Committee stated that the court "has made numerous important rulings affecting individual rights," and noted "it is especially important that there has been extensive use of the right to individual appeals to the Constitutional Court."[54] The court has also worked with international advisers from the Council of Europe on cases involving minorities.

The term of the outgoing Constitutional Court expired on December 6, 1999, leaving eight of the eleven posts on the court open for appointment. Regrettably, the ruling HDZ party took advantage of the end of this term to attempt to rob the court of its independence and potentially destroy its reputation. Despite a prohibition against the appointment of persons to the Constitutional Court who are members of a political party, the majority of the candidates approved by the parliament on October 22 have been selected for their political affiliations. Several, including prominent HDZ nationalist parliamentarian Vice Vukojevic, are officials in the ruling party and at least two have little or no experience as judges. Appointments to the court are for a period of eight years. Although all the candidates resigned their party memberships prior to taking up their appointments, many observers, including Vladimir Primorac, former Supreme Court judge, regard the manner of the appointments and the appointments of some of the candidates as a violation of the spirit of the law.[55]

In exchange for two seats on the new court, opposition members of the Judicial Board approved the entire list of new candidates, although most opposition representatives boycotted the vote in parliament. Rather than debating and voting on each candidate separately, both houses of parliament voted for the entire pre-selected candidate list on a straight yes-no vote. Aside from the outgoing president of the court, Jadranko Crnic, who had already made clear his determination to retire at the end of his term a year ago, none of the other seven outgoing members of the court were asked if they would like to remain on the court.[56]

The result is likely to be a weakened court, which has neither the juridical expertise nor the political independence to carry out its duties as the final arbiter of electoral disputes and to curb the excesses of the executive. In the words of one Croatian human rights lawyer, "the first danger is the elections, but in the long-term, [the danger] is the effect on the constitution."[57] A political scientist pointed to another concern, suggesting that it was "likely that the Constitutional Court will inhibit the legislative process for the life of the next parliament."[58] Justice Crnic was damning in his assessment of the manner in which the new members of the court had been appointed: "my view is that in the appointments to the court, [the political parties] went over the boundary of politeness and are coming close to crossing the line of constitutionality."[59]

[54] "Draft Report, Croatia" Committee on the Honoring of obligations and commitments by member states of the Council of Europe (Monitoring Committee), January 28, 1999.

[55] See "By the Agreement on Constitutional Judges, the Opposition has Broken its Promise to the Voters of not Forming any coalitions with HDZ (Interview with Vladimir Primorac)," *Jutarnji List*, October 20, 1999.

[56] Human Rights Watch interview with Jadranko Crnic, Mladen Zuvela, and Jurica Malcic, Constitutional Court of the Republic of Croatia, Zagreb, October 27, 1999.

[57] Human Rights Watch interview, Center for the Direct Protection of Human Rights, Zagreb, October 20, 1999.

[58] Human Rights Watch interview, Davor Gjenero, Croatian Law Center, Zagreb, October 20, 1999.

[59] Human Rights Watch interview with Jadranko Crnic, Mladen Zuvela, and Jurica Malcic, Constitutional Court of the Republic of Croatia, Zagreb, October 27, 1999.

Justice Crnic has indicated, both to Human Rights Watch and in a variety of press interviews, that he believes that the stipulation that the president must inform the parliament six months in advance that the Constitutional Court's mandate will expire is intended to provide for a lengthy and public selection process for the members of the new court.[60] He made clear to Human Rights Watch his dismay at the procedure that was used:

> There should be a public debate for every candidate [member of the Constitutional Court]. [Each candidate] should be interviewed about his role because...the court can, under its jurisdiction, review every decision of every court and body of the government. We have to have persons who are of professional quality to be able to make such decisions. It wouldn't be appropriate that I talk about names, but during these eight years there has only been noise once about a judge, whereas in recent days, there has been a great deal of noise.[61]

The new members of the court took up their posts on December 7. The decision of the outgoing court to appoint the three continuing members to the Constitutional Court Council, as noted, will substantially enhance confidence in the electoral process and limit concerns of political interference in elections. Justice Crnic believes that only a change in the Constitutional Law on the Constitutional Court and the Law on the Status of Parliament to clarify the manner of appointments will avoid such an outcome in the future. He appears optimistic about the possibility of such a change: "I have to believe that in future the Constitutional Law and [Law on the Status of] Parliament will be changed and that it will be the first and last time that this [manner of appointment] will happen."[62]

IMPLEMENTATION OF RESULTS

On October 18, the late President Franjo Tudjman gave a rare press conference for invited foreign journalists in Zagreb. When asked if he would install an opposition prime minister if the opposition won the elections, President Tudjman's reply that he would do what was "in the best interest of the Croatian people" struck many in Zagreb as ominous. His subsequent silence on the issue, despite demands from the opposition parties for clarification, only serve to heighten fears that the opposition would not be allowed to form a government.[63] The "Zagreb crisis," cited by many journalists and domestic NGOs as a possible model for the post-election period, demonstrated that the Croatian president was willing to ignore the will of the electorate. Although the death of the president has temporarily eclipsed the issue of the implementation election process, the willingness of the ruling party to respect the election results remains an open question. In the words of one journalist: "the post-election period will be more important than the elections."

The prime minister and other ministers are appointed by the president at the recommendation of the parliament, giving the president effective veto power over the formation of a government. With the appointment of state secretaries in key ministries (Interior, Defense and Foreign Affairs) over the last year that are accountable directly to the president, President Tudjman created the means for the President of Croatia, along with his defense council, the VONS, to govern Croatia for several months if a stalemate occurs between the current (acting) president and the parliament over the formation of a government. Even if such an outcome now appears unlikely, it is important to note that the House of Counties, an upper chamber of the parliament with the ability to amend or block legislation, will remain under HDZ control at least until 2002. The ruling HDZ party will also continue to

[60] See, for example, "I did not believe the coercive changes within the Constitutional Court were possible: interview with Jadranko Crnic", *Novi List*, October 9, 1999; "Crnic: the Choice of Constitutional Court Judges Might Be Disputed," *Jutarnji List*, October 24, 1999.

[61] Human Rights Watch interview with Jadranko Crnic, Mladen Zuvela, and Jurica Malcic, Constitutional Court of the Republic of Croatia, Zagreb, October 27, 1999.

[62] Ibid.

[63] "Croatia's Tudjman silent again on change of power," Reuters, October 26, 1999.

control state television and enjoy substantial influence over the judiciary, including the Supreme Court the Constitutional Court. A democratically-elected government from the opposition may find its room for maneuver limited.

CONCLUSION

The strength of Croatia's civil society, its critical independent press, and some of its political leaders are evidence of its democratic potential. The current Constitutional Court shows that rule of law and respect for individual rights matter in Croatia, and offers a glimpse of the potential for the entire judiciary if it were given the necessary resources and independence from political interference. The desire of its population for democratic change is also evidence of Croatia's potential. Yet too often, these natural tendencies are squashed or impeded by the anti-democratic instincts of a small group of politicians, mostly in the ruling HDZ party, who are willing to undermine state institutions and curtail the freedoms its constitution guarantees for their own ends. As a result, it appears that Croatia's democracy deficit is widening at the very moment when the Croatian people are beginning to realize the country's true potential.

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